

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OFFICE OF SPECIAL MASTERS

(Filed: June 7, 2007)

DO NOT PUBLISH

SACHIN SHARMA and ALENA BARYSIUK,)	
father and mother of their daughter,)	
LAVANI SHARMA,)	
)	
Petitioners,)	
)	
v.)	No. 06-0547V
)	Attorneys' Fees; Attorneys' Costs
SECRETARY OF)	
HEALTH AND HUMAN SERVICES,)	
)	
Respondent.)	
)	

DECISION ON ATTORNEYS' FEES AND ATTORNEYS' COSTS¹

Petitioners, Sachin Sharma and Alena Barysiuk (Mr. Sharma and Ms. Barysiuk), as parents of their daughter, Lavani Sharma (Lavani), seek an award of \$14,757.48 in attorneys' fees and attorneys' costs for an action that they pursued under the National Vaccine Injury Compensation Program (Program).² See Joint Status Report (JSR), filed June 5, 2007. Mr. Sharma and Ms. Barysiuk represent that they did not incur any personal expenses as defined by General Order No. 9. See JSR. Respondent does not object. See JSR.

Mr. Sharma and Ms. Barysiuk did not receive Program compensation. Nevertheless, the statute enacting the Program accords discretion to the special master to "award an amount of

¹ As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, "the entire decision" will be available to the public. *Id.*

² The statutory provisions governing the Vaccine Program are found in 42 U.S.C. §§ 300aa-10 *et seq.* For convenience, further reference will be to the relevant section of 42 U.S.C.

compensation to cover” Mr. Sharma’s and Ms. Barysiuk’s “reasonable attorneys’ fees and other costs” as long as “the special master or court determines that” Mr. Sharma and Ms. Barysiuk possessed “a reasonable basis for the claim” and that Mr. Sharma and Ms. Barysiuk filed the petition “in good faith.” § 300aa-15(e)(1); *see, e.g., Di Roma v. Secretary of HHS*, 1993 WL 496981 (Fed. Cl. Spec. Mstr. Nov. 18, 1993). As the United States Supreme Court has cautioned in cases involving other fee-shifting schemes, the special master’s “discretion is not without limit.” *Blanchard v. Bergeron*, 489 U.S. 87, 89 n.1 (1989). Thus, absent “special circumstances,” the special master “should ordinarily” award attorneys’ fees and costs to an unsuccessful petitioner. *Id.*, citing *Newman v. Piggie Park Enterprises*, 390 U.S. 400, 402 (1968); *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983).

The special master has considered carefully Mr. Sharma’s and Ms. Barysiuk’s request. The special master determines that Mr. Sharma’s and Ms. Barysiuk’s request is appropriate. Therefore, in the absence of a motion for review filed under RCFC Appendix B, the clerk of court shall enter judgment in Mr. Sharma’s and Ms. Barysiuk’s favor for \$14,757.48. The judgment shall provide that Mr. Sharma’s and Ms. Barysiuk’s attorney of record, Michael G. McLaren, Esq. (Mr. McLaren), may collect \$14,757.48 from Mr. Sharma and Ms. Barysiuk. Under Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing the right to seek review.

The clerk of court shall send Mr. Sharma’s and Ms. Barysiuk’s copy of this decision to Mr. Sharma and Ms. Barysiuk by overnight express delivery.

John F. Edwards
Special Master